IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.353 OF 2000.

Savita Sadanand Gavade
Life Convict No. 797,
Yeravada Central Prison,
Yervada, Pune-6. ..Appellant
(orig.Accused).

Vs.

The State of Maharashtra .. Respondent.

Mrs. Pranali Kakade, advocate appointed for the appellant-accused.

Mrs. U.V. Kejriwal, A.P.P..for the State.

CORAM : V.G.PALSHIKAR &
ANOOP V.MOHTA, JJ.

DATE : 1ST NOVEMBER, 2004.

ORAL ORDER (PER ANOOP V. MOHTA,J).

. The appellant was tried and convicted for the offence punishable under Section 302 of Indian Penal Code and sentenced to imprisonment for life and to pay a fine of Rs. 500/-, in default to suffer imprisonment for six months.

2. Heard the learned Counsel appearing for the appellant and the learned A.P.P. for the State. We have gone through the testimonies of all the witnesses and the record of the case, with the assistance of the

learned Counsel appearing for the parties.

3. The prosecution story which leads to the order of conviction has been corroborated and proved by the 8 prosecution witnesses including documents Exh. 1 to 20. The appellant-accused was charged that on 8/3/1998, at about 8.30 a.m. she committed murder of her adopted daughter Kumari Sapana aged 3 years, (hereinafter referred as" deceased ") by severely beating and hitting on her head by a crushing stone Therefore, P.W. 1, Parmeshwar Ganme, P.S.I., had after receiving of a telephone call at 9.45 a.m from Nair Hospital, from the duty constable and reducing the same in writing he proceeded towards the Hospital. The girl was dead by that time. The photographs were taken of the dead body. The body was sent for post-mortem. The statement of the accused was also recorded on the same day.

4. P.W. 2, Sadanand Gavade, the husband of appellant-accused, has corroborated that on 8/3/1998 when he returned at home, he saw deceased in the lap of the accused and when enquired, the appellant told that a crushing stone had fallen on her. P.W. 2 saw the stone

lying on the spot in question. The deceased was without any clothes. There were belt marks on the back side of the girl. P.W. 2 along with appellant therefore, took the girl at Nair Hospital. P.W. 2 has deposed that the appellant-accused used to beat the deceased. There was no quarrel on 8/3/1998 in the morning. P.W. 2, when left the house to purchase the morning paper, the deceased was sitting on the otta. P.W. 2 has admitted that the accused did not beat Sapana with the stone in his presence. P.W. 2 has denied that on account of strained relations with the appellant, he was deposing falsely.

5. P.W. 3, Shailesh Mohite, who had examined and proved the post-mortem, dated 8/3/1998, has deposed that there were 46 injuries on the dead body of the deceased. All these injuries were ante-mortem. The cause of death was haemorrhage and multiple injuries. Those injuries, as opined could be caused, as a result of severe beating by slap, belt and or banging against hard object, and such other cause. This witness has also identified the various recent injuries. This witness has also deposed that the above injuries could not have been caused by

the accidental fall of a stone. Nothing could shake his testimony. This witness along with other witnesses corroborates that the deceased death was homicidal.

6. P.W. 4, Anita Kamblekar, a minor girl of 14 years of age has further supported the prosecutions case, that the appellant used to beat the deceased regularly with a belt and also with other articles. She had witnessed all those things because, she was also staying in the premise belonging to the appellant-accused.

7. P.W. 5, Shantabai Satam, who had shared the room for about two months, has also deposed that accused used to beat deceased with sticks and rubber pipe, apart from slapping. This witness has also corroborates the prosecution case about the frequent quarrel and nature and attitude of the appellant towards deceased being an adopted girl.

8. P.W.6, Sampat Satpute has deposed that deceased was given in adoption, after completion of all formalities. This witness has deposed that the

appellant used to threaten and never allowed him to meet the deceased. This witness has also deposed that the appellant used to beat Sapana with stick. even in their presence.

9. P.W. 7, Rajan Birje, a panch witness to the spot of occurrence, articles and materials seized including the stone, in question. This witness cannot be discarded merely, because he has deposed that such crushing stones, like article "A", were freely available in the market.

10. P.W. 8 Rajendra Thakur, who was attached to the Police Station, Tardeo, as Police Inspector, has further corroborated the facts and events from the time of receipt of message on 8/3/1998 till the registration and submission of the charge-sheet in question. This witness has deposed that the statement of accused was recorded in the hospital itself. This witness has also supported the prosecution case.

11. The accused in her statement under Section 313 of Cr.P.C. had stated that her husband used to beat

her, as well as, the deceased, as he was habitual drunkard. The appellant has not examined any witness in support of her defence.

12. After considering the above we are of the view that the prosecution has proved the homicidal death of deceased Sapana. the various injuries on the dead body of Sapana were sufficient to cause her death and all those injuries were caused by the appellant-accused. There is no eye witness to the incident. Therefore, based on the circumstantial evidence placed and proved by the prosecution, the order of conviction in question has been passed. The prosecution witnesses have proved the cruelty and regular beating by the appellant. The article shown has been recovered. The Doctor has also supported the prosecution case that the death was caused due to various injuries on the body of the deceased. All these witnesses have corroborated the prosecution case that the appellant had assaulted the deceased Sapana hitting a stone on her head. The regular beating by the Appellant-accused with stick, belt and also shows the attitude of the appellant and anger of the appellant towards the deceased Therefore, according to us, the

learned Sessions Judge has rightly arrived to this conclusion that the appellant-accused had assaulted and killed minor Sapana.

13. In absence of eye witnesses, it is difficult to accept the prosecution's case, that there was an intention to kill the deceased. All the testimonies of the witnesses in fact shows that there was regular beating by the appellant to the deceased. Assuming for a moment, that the appellant used to beat and treat the deceased harshly, all the time, but it was never intended to kill her. Whatever may be circumstances, we are of the view that the regular beating instances, as deposed by the witnesses no where supports that, she had plan and intention to kill the deceased. This regular beating must be because of frustration and or anger, as there was no cordial relations of the appellant-accused with her husband. The deceased was admittedly adopted child. All the injuries as opined were not of recent, even though there were 46 injuries. Considering above facts and circumstances of the case, including mental attitude and anger expressed from time to time by the appellant over the deceased. We are of the view that

the appellant might have assaulted the deceased but not with the intention to kill her then and there only. The fatal injuries and the various injuries on the part of the body of the deceased also cannot be over looked.

24. The learned Advocate appearing for the appellant, has relied on (2000) 10 Supreme Court Cases 324, Kaluram V. State of Rajasthan and submitted that this is the case, which fall within the purview of section 304 (II) of the Indian Penal code and cannot be said to be a case under Section 302 of I.P.C. She has also relied for the same, on 2000 All MR (Cri) 163, Prabhudas Apparao Biditia Vs. State of Maharashtra and 1976 S.C.C. (Cri) 293, Jayraj V. State of Tamil Nadu. After going through the testimonies of all witnesses, we are of the view that this case falls within the ambit of section 304 (II) I.P.C. This is not the case of conviction under Section 302 of Indian Penal Code. In view of this, we alter the conviction from Section 302 I.P.C. to Section 304 (II) of Indian Penal Code. In the facts and circumstances of the case, so far as, sentence is concerned, the appellant-accused is in the jail. We therefore, reduce the sentence to the period

which she has already undergone.

14. In view of this, the appeal is partly allowed. The conviction under section 302 of Indian Penal Code has been altered to Section 304 (II) and the appellant is hereby restricted to the sentence for the period,
she has already undergone. We are therefore, directing to release the appellant, forthwith, if she is not needed in any other offence.

15. For the reasons above, appeal is partly allowed.

16. We quantity the fees to be paid to the advocate appointed for the appellant at Rs. 750/0 for this appeal.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]